



# Horizontal Legislation

# Overview

In the previous reporting period, the practice of limiting space for public participation in decision-making processes continued. Legislative activity was somewhat more intense than in the previous year. However, the long-awaited amendments to the Law on Impact Assessment and Strategic Impact Assessment were not adopted, although drafts were presented to the public, but, as has previously been the case, the public hearings were held during public holidays (New Year and Christmas).

The process of adopting the Spatial Plan of the Republic of Serbia, one of the most important national planning documents, was marked by violations of the Aarhus Convention, the Law on Strategic Environmental Impact Assessment and the Protocol on Strategic Environmental Impact Assessment within the Convention on Environmental Impact Assessment in a Transboundary Context (ESPOO Convention).

The draft Law on Amendments to the Law on Integrated Prevention and Control of Environmental Pollution was not put up for public discussion, which again pushed back the deadline for issuing integrated permits, sending a clear signal to major polluters that they could continue their activities without obtaining the permits.

The draft Law on Amendments to the Law on Water entered parliamentary proceedings without public participation, and following an urgent procedure. A group of citizens' associations sent a request to the National Assembly to immediately withdraw the Law from the procedure, as it is not in accordance with the Constitution of the Republic of Serbia.

The Regulation on public participation in the development of certain plans and programs in the field of environmental protection has been adopted and could potentially ensure better availability of relevant information. Public participation during the pandemic was, and continues to be, difficult, and in

some cases completely impossible. Thus, only selected civil society and public representatives were invited to the public debate on the Law on Amendments to the Law on Nature Protection, while consultations on the Draft Law on Amendments to the Law on Environmental Protection were conducted via video conference, but with very few participants.

The adoption of the Law on Amendments to the Law on Free Access to Information of Public Importance expands the powers of the Commissioner for Information of Public Importance and Personal Data Protection. The number of complaints to the Commissioner concerning the Ministry of Environmental Protection continues to increase every year.

There is still an obvious lack of information on the costs related to the harmonization of Serbian regulations in the field of horizontal legislation with those of the European Union, as well as their implementation.

The reporting period was marked by great media and public attention regarding the exploitation of lithium within the "Jadar" project. The epilogue of this story, which for a time paralyzed the entire political scene, is still to be written.

# Strategic and Legislative Framework

## Environmental impact assessment and Directive 2011/92/EU (replaced by Directive 2014/52/EU)

According to the Government's Work Plan for 2021, the adoption of amendments to the Law on Environmental Impact Assessment is scheduled for December 2021.<sup>1</sup> Although the Law has not yet been adopted, in contrast to previous years when the Government's work plans merely moved the deadline for the adoption of this Law (2018, 2019, 2020), the Draft Law was finally presented to the public in November 2021, when public consultations were organized, while the public debate was held in January 2022.

In order for the Environmental Impact Assessment Directive (Directive 2014/52/EU) to be fully transposed into domestic legislation, in addition to adopting amendments to the Law a Regulation on amendments to the Regulation establishing the list (I) of projects for which an impact assessment is mandatory and a list (II) of projects for which an environmental impact assessment may be required must be adopted. The adoption of this Regulation was not part of the Government's Work Plan for 2021. As of the writing of this report, the Government's Work Plan for 2022 has not been published.

In the Negotiating Position for Chapter 27, the Republic of Serbia has recognized that the quality of the impact assessment and the public consultation process are the main challenges in the implementation of the Directive.<sup>2</sup>

1 The Government of the Republic of Serbia (2021): The Government's Work Plan for 2021, available at: [https://www.srbija.gov.rs/extfile/sr/370541/plan\\_rada\\_vlade\\_za\\_2021\\_cyr.pdf](https://www.srbija.gov.rs/extfile/sr/370541/plan_rada_vlade_za_2021_cyr.pdf)

2 Government of the Republic of Serbia (2019): Negotiating position of the Republic of Serbia for the Intergovernmental Conference on the Accession of the Republic of Serbia to the European Union for Chapter 27 – Environment and Climate Change, available at: [https://www.mei.gov.rs/upload/documents/pristupni\\_pregovori/pregovaracke\\_pozicije/pg\\_pozicija\\_27.pdf](https://www.mei.gov.rs/upload/documents/pristupni_pregovori/pregovaracke_pozicije/pg_pozicija_27.pdf)

## Strategic impact assessment and Directive 2001/42/EC

In order to fully harmonize domestic legislation with Directive 2001/42/EC, which regulates the assessment of the impact of certain plans and programs on the environment, the adoption of amendments to the Law on Strategic Environmental Impact Assessment was announced. This adoption process was planned to be completed in the fourth quarter of 2018. The Government Work Plan for 2021 moved the deadline for the adoption of the amendments to December 2021. However, this deadline was not met either.

The Ministry of Environmental Protection conducted a public debate regarding the Draft Law on Environmental Impact Assessment and the Draft Law on Strategic Environmental Impact Assessment in the period from December 24 to January 14, but the Report on the debate has not yet been published. This period overlapped with national and religious holiday, reducing the time available for the public to participate. The public presentation of both drafts was held on January 10.<sup>3</sup>

## Public participation in the development of certain plans and programs and Directive 2003/35/EC

The negotiating position of the Republic of Serbia for Chapter 27 states this Directive will be fully transposed by the end of 2020 through: the Law on Amendments to the Law on Environmental Impact Assessment; the Law on Amendments to the Law on Integrated Prevention and Control of Environmental Pollution; the Law on Amendments to the Law on Water and the Decree on Public Participation in the Development of Certain Plans and Programs in the Field of Environmental Protection.<sup>4</sup>

When it comes to environmental impact assessment, instead of a Law on Amendments, a Draft Law on Environmental Impact Assessment was compiled,

3 Ministry of Environmental Protection, Public call for participation in the public debate on the Draft Law on Environmental Impact Assessment, available at: <https://www.ekologija.gov.rs/saopstenja/najave/javni-poziv-za-ucesce-u-javnoj-raspravi-o-nacrtu-zakona-o-proceni-uticaja-na-zivotnu-sredinu>

4 Government of the Republic of Serbia (2019): Negotiating position of the Republic of Serbia for the Intergovernmental Conference on the Accession of the Republic of Serbia to the European Union for Chapter 27 – Environment and Climate Change, available at: [https://www.mei.gov.rs/upload/documents/pristupni\\_pregovori/pregovaracke\\_pozicije/pg\\_pozicija\\_27.pdf](https://www.mei.gov.rs/upload/documents/pristupni_pregovori/pregovaracke_pozicije/pg_pozicija_27.pdf)

which was put to public discussion in the period from December 24, 2021, to January 14, 2022. Coalition 27 participated in the public debate, and voiced its position that choosing this period for conducting the public debate meant that the period of public participation was effectively shortened to less than 20 days, because it included the New Year and Christmas holidays, which is contrary to regulations and good practices in public participation.

The Regulation on public participation in the development of certain plans and programs in the field of environmental protection was adopted in December 2021. This document refers to: air quality plans, plans and programs in the field of waste management, protection from noise, and water pollution protection plans, and does not refer to plans and programs where public participation is ensured through the strategic impact assessment procedure, nor to plans and programs adopted in accordance with the law governing the management and protection of water. The regulation establishes the obligation of the competent authority to inform the public through a public call about the place and time of public insights, public presentations and public debates on draft plans or programs, and the method of submitting comments and objections, as well as the obligation to inform the public through print newspapers and online – through the website of the competent authority. This ensures a higher level of information availability. Public insight must last for at least 30 days, starting from the day the public call for participation in the public debate was published, and public presentations and public discussions can be held no earlier than 20 days from the day the public call was published.<sup>5</sup>

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## Environmental crimes and Directive 2008/99/EC

No progress has been made in harmonizing legal regulations related to environmental criminal law; Directive 2008/99/EC is still only partially transposed into domestic legislation. Enforcement remains a key priority, including achieving visible results in the implementation of the Environmental Crimes Directive. The most recent amendments to the Criminal Code were made in 2019.

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5 RERI (2021): The Regulation on public participation in the development of plans and programs in the field of environmental protection has been adopted, available at: <https://www.reri.org.rs/usvojena-uredba-ocucescu-javnosti-u-izradi-planova-i-programa-u-oblasti-zastite-zivotne-sredine/>

## Directive 2007 /2 /EC – INSPIRE Directive

In its Negotiating Position for Chapter 27, the Republic of Serbia has requested a transitional period of two years and four months from the date of accession to the EU for the full implementation of the INSPIRE Directive. The number of years required for the transition period toward the full implementation of the Directive<sup>6</sup> should be determined by the Specific Implementation Plan for the INSPIRE Directive.

In order to further harmonize the legislative framework with the EU acquis, the adoption of a series of by-laws is planned, namely regulations related to monitoring and reporting (2020), interoperability, network services and access to geodata sets and services, including public access and data exchange between public authorities (2020).<sup>7</sup>

## Availability of environmental information and Directive 2003/04/EC

Directive 2003/4/EC on public availability of environmental information has been almost completely transposed into domestic legislation.

With the aim of fully harmonizing the legislative framework with the Directive, harmonization of the provisions of the Law on Free Access to Information of Public Importance is planned with regard to exceptions to the obligation to provide environmental information.<sup>8</sup> The negotiating position for Chapter 27, which was adopted in 2019, envisaged the completion of this process by the end of 2020. However, the Law on Amendments to the Law on Free Access to Information of Public Importance<sup>9</sup> was instead adopted at the end of 2021. The amendment expands the powers of the Commissioner for information of

6 Government of the Republic of Serbia (2019): Negotiating position of the Republic of Serbia for the Intergovernmental Conference on the Accession of the Republic of Serbia to the European Union for Chapter 27 – Environment and Climate Change, available at: [https://www.mei.gov.rs/upload/documents/pristupni\\_pregovori/pregovaracke\\_pozicije/pg\\_pozicija\\_27.pdf](https://www.mei.gov.rs/upload/documents/pristupni_pregovori/pregovaracke_pozicije/pg_pozicija_27.pdf)

7 Ibid.

8 Government of the Republic of Serbia (2019): Negotiating position of the Republic of Serbia for the Intergovernmental Conference on the Accession of the Republic of Serbia to the European Union for Chapter 27 – Environment and Climate Change, available at: [https://www.mei.gov.rs/upload/documents/pristupni\\_pregovori/pregovaracke\\_pozicije/pg\\_pozicija\\_27.pdf](https://www.mei.gov.rs/upload/documents/pristupni_pregovori/pregovaracke_pozicije/pg_pozicija_27.pdf)

9 “Official Gazette of RS”, no. 120/2004, 54/2007, 104/2009, 36/2010 and 105/2021.

public importance and personal data protection and regulates the conduct of proceedings before administrative bodies, but does not completely align the Law with the Directive. The amendment only partially transposes the provisions of the Directive, because a limitation on the right to access to information was introduced. However, it omits provisions included in the Directive that clearly indicate that the reasons for limiting the right to access to information must be interpreted restrictively, as exceptions to the general rule were omitted. Additionally, the obligation to ensure the availability of information on emissions of polluting substances into the environment is not explicitly prescribed.

In May 2021, the Ministry of State Administration and Local Self-Government of Serbia announced a public hearing on the Draft Amendments to the Law on Free Access to Information of Public Importance. The proposed amendments actually violated already established practices and principles of free access to information. The main drawback of the proposed amendments is that the Ministry proposed to expand the scope for denying the right to access information of public importance, while at the same time giving broad discretionary powers to authorities. Nevertheless, after the shortcomings of the law were pointed out, mainly by civil society, the final version of the Law on Free Access to Information of Public Importance was significantly more in line with the established principles of the right to access to information. However, the final version of the Law did not abolish the ban on submitting complaints to the Commissioner for Access to Information of Public Importance and Protection of Personal Data in cases where information is withheld by the Government of the Republic of Serbia, the National Assembly, the President of the Republic, the Supreme Court of Cassation, the Constitutional Court or the Republic Public Prosecutor. Rather, the Law expanded the number of bodies against which no complaint may be filed with the Commissioner, adding the National Bank of Serbia to the list of privileged bodies against whose decisions only an administrative dispute may be initiated, which can take many years to resolve.



## Responsibility for preventing and eliminating damage to the environment and Directive 2004/35/EC

There was no progress regarding the adoption of the Law on Liability for Environmental Damage, meaning no progress has been made in transposing the Directive on Liability for Environmental Damage 2004/35/EC. The directive is in the initial phase of transposition into domestic legislation. For its complete transposition, the adoption of the Law on Liability for Environmental Damage is necessary.<sup>10</sup> The preparation of the Law began in 2015, while the first public consultations regarding the Draft Law on Liability for Environmental Damage were held in 2019. The Government's Work Plan for 2021 foresaw the adoption of the Draft Law in December 2021. However, at the time of the writing this report, the Law had not yet been adopted.<sup>11</sup>

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10 Government of the Republic of Serbia (2019): Negotiating position of the Republic of Serbia for the Intergovernmental Conference on the Accession of the Republic of Serbia to the European Union for Chapter 27 – Environment and Climate Change, available at: [https://www.mei.gov.rs/upload/documents/pristupni\\_pregovori/pregovaracke\\_pozicije/pg\\_pozicija\\_27.pdf](https://www.mei.gov.rs/upload/documents/pristupni_pregovori/pregovaracke_pozicije/pg_pozicija_27.pdf)

11 Government of the Republic of Serbia (2021): Work plan of the Government of the Republic of Serbia for 2021, available at: <https://www.srbija.gov.rs/dokument/370535/plan-rada-vlade-republike-srbije.php>

# The Implementation of Regulations

The trend of shrinking space for public participation in the decision-making process in the field of environmental protection continued in 2021. This year was also marked by the COVID-19 pandemic, which was also repeatedly abused as an excuse to prevent the participation of the interested public in decision-making processes. Even after preventive measures to suppress the pandemic were lifted, the public continued to be prevented from participating in public presentations of draft plans and reports on strategic environmental impact assessments, as well as draft laws and other regulations and public policy documents.

The implementation of the Law on Strategic Environmental Impact Assessment is inconsistent, rendering it an ineffective instrument for the prevention of potential harmful effects of plans, programs and policies on the environment. The quality of strategic environmental impact assessment reports is unsatisfactory, and the results of public consultations are often not taken into account in the decision-making process. For example, the comments of civil society organizations on the Draft Spatial Plan of the Republic of Serbia, which referred to the newly planned thermal power plants (which are foreseen in the Draft), were rejected by the Ministry of Construction, Transportation and Infrastructure, which stated in its response that the proposed thermal power plants referred to in the Plan are only potential projects. The Ministry also failed to make clear reference to the Green Agenda for the Western Balkans or the climate change and energy policies of the EU, with which Serbia should comply.

Serbia also showed a lack of capacity to carry out cross-border consultations regarding plans with cross-border effects. Cross-border consultations regarding the Draft Spatial Plan of the Republic of Serbia were opened after the conclusion of the consultations in Serbia, which is not in line with the requirements of

the Directive on Strategic Environmental Impact Assessment and the Protocol on Strategic Environmental Impact Assessment to the ESPOO Convention.

The Ministry of Environmental Protection persistently denies access to legal remedies to the public and civil society organizations in cases where they believe their rights have been violated in the process of strategic impact assessment. Namely, the Ministry of Environmental Protection denies that the decision on granting approval for a strategic environmental impact assessment is a legal act against which a legal remedy can be filed, without explaining the legal nature of the approval for the strategic environmental impact assessment.

## Application of the Law on Strategic Impact Assessment in the Case of the Spatial Plan of the Republic of Serbia

The Spatial Plan of the Republic of Serbia (PPRS) is the basic planning document for the spatial planning and development of the Republic of Serbia. The draft of this important development planning document was available for public inspection in the period from April 5 to May 5, 2021. On that occasion, the procedure failed to properly apply the standards of the Aarhus Convention regarding public participation. The Aarhus Convention Compliance Committee has emphasized that the Convention applies in its entirety, with equal force, during the COVID-19 pandemic, and that the rights guaranteed by the Convention cannot be diminished.

The Ministry of Construction, Transportation and Infrastructure failed to inform the public about the time and place of the public hearing in its announcement of the public insight into the PPRS, which is contrary to the regulations. The public discussion on the Report on the Strategic Environmental Impact Assessment of PPRS was held only a month and a half after the public insight was completed, at the same time as the public sessions of the Planning Commission were held, from June 25 to July 5, 2021. The competent authority, contrary to the regulations, equated the public sessions of the Planning Commission with the public debate on the Strategic Impact Assessment Report. Given that, according to the Law on Strategic Impact Assessment (Article 19), the public debate on the Report on the Strategic Impact Assessment of the PPRS

is held as part of the public insight procedure for the PPRS, in doing this, the competent authority denied the public the right to participate in the public discussion. Additionally, Article 20 of the same Law stipulates that a report on the participation of interested authorities and organizations and the public shall be prepared within 30 days from the end of the public hearing, and in this case, the Report was published only in October 2021.

The Ministry of Construction, Transportation and Infrastructure, as the competent authority, limited public participation in this process, using the COVID-19 pandemic, inappropriately, as a justification and dividing the public session of the Planning Commission into five sessions, with separate sessions for civil society, local self-government units, public companies and citizens.<sup>12</sup> The participants were thus separated despite the fact that, according to the then valid Order on the prohibition of gatherings in public places in closed and open spaces in the Republic of Serbia ("Official Gazette of the RS", no. 60/2021), gatherings in closed spaces of up to 500 persons were allowed in spaces of appropriate volume.

Public participation was also limited by the duration of public inspection, which was held for 30 days. For a technically demanding document of over 600 pages, this period was too short, especially bearing in mind that the period was essentially shortened by five days due to national holidays (Easter and International Labor Day), which are non-working days. This is contrary to the Aarhus Convention. The Aarhus Convention Compliance Committee has made it clear that at least six weeks should be allowed for the public to review documents, and then a further six weeks for public insight and submission of comments.

Obligations stemming from international treaties defining public participation were also violated. Namely, quite late in the process of drafting this document, the Republic of Serbia informed the remaining neighboring countries about the possible cross-border impact of the Spatial Plan on the environment, even

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12 Ministry of Construction, Transportation and Infrastructure: Announcement for the public session of the Commission for Public Inspection of the Draft Spatial Plan of the Republic of Serbia from 2021 to 2035 and the Report on the Strategic Assessment of the Impact of the Spatial Plan of the Republic of Serbia from 2021 to 2035 on the Environment; available at: [https://www.mgsi.gov.rs/sites/default/files/OGLAS%20javna%20sednica%20PPRS%202021-2035\\_0.pdf](https://www.mgsi.gov.rs/sites/default/files/OGLAS%20javna%20sednica%20PPRS%202021-2035_0.pdf)

though it was obliged to submit all relevant documentation to the countries that initiated cross-border consultations at the latest when the draft document was put up for public insight in Serbia. Bulgaria, Romania and Bosnia and Herzegovina initiated cross-border consultations following a letter from non-governmental organizations, and submitted requests for information in the process of drafting the Spatial Plan. Public consultations were subsequently held in Hungary, Bosnia and Herzegovina and Romania, while Croatia expressed dissatisfaction with the fact that documentation was submitted in Cyrillic. Public consultations were repeated in Romania, because that the documentation was presented exclusively in English.

In the absence of a broader social dialogue on the Spatial Plan, civil society organizations and experts analyzed the Draft of this document, organized a consultative process and invited citizens to join the public discussion. Despite the fact that no effort was made by the competent ministry to raise awareness of or present this complex document to the public, citizens submitted over 800 individual comments during the public discussion.

## Application of the Law on Strategic Environmental Impact Assessment in the case of drafting Amendments to the General Regulation Plan of Belgrade

The General Regulation Plan (GRP) of the City of Belgrade is the umbrella regulatory document for urban planning in Belgrade. The public insight into the second stage of the first phase of drafting amendments and additions to the urban plan was held in the period from December 20, 2021 to January 21, 2022. Despite holding the public inspection during the New Year's and Christmas holiday period, when the attention of most citizens was elsewhere, more than 900 objections were received from the public. Six civil society organizations submitted a request to the competent authorities to postpone the public inspection procedure until the conditions for effective public participation were met. The competent institutions did not respond to this request.

A public presentation of all planning documents that require a Strategic Environmental Impact Assessment Report (such as a GRP) must be held, not

only to enable the interested public to participate in the process of planning and managing their city, but also to inform the public in a timely manner about all the relevant and effects of the proposed planning solutions on the environment.

Proper timing, comprehension, integrity and accuracy of published information are a precondition for the quality participation of the public, submitting comments and suggestions, and respect for the principles of participation and precaution in environmental protection. This cannot be achieved if the public is involved exclusively in the final stage of public insight. According to the Law, the public presentation must be held during the public insight, and must be open to the public. In this case, the public presentation, i.e. the public discussion on the Report on Strategic Environmental Impact Assessment, was not carried, given that the competent authority (as in the case of PPRS) incorrectly judged the public discussion on the strategic assessment report to be the same as the public session of the Planning Commission. The public presentation and the public meeting of the Planning Commission cannot be held together, because only objectors can participate in the public meeting of the Commission. In this way, the provisions of the Aarhus Convention, an international agreement that guarantees the public the right to participate in decision-making in the field of the environment, of which Serbia is a signatory, were violated.

Over 100 citizens attended the meeting of the Planning Commission, which lasted nine hours, in a space that (even without observing epidemiological measures) could only fit half of those who were present. Citizens largely expressed concerns about proposed construction on green areas, unfavorable traffic solutions in Košutnjak, and environmental devastation in the area of Bara Reva in Krnjača.

The Report on the Strategic Impact Assessment of the GRP was prepared in violation of all legal regulations, with fundamental deficiencies and inadequate methodology. A significant part of the planning scope was completely omitted and was not considered, under the pretext that this was done at the level of subordinate planning acts. Even setting aside the fact that harmonizing planning acts "from the bottom up" is illegal, this approach is especially illogical and unacceptable in the field of strategic environmental impact assessment.

Strategic impact assessment is precisely the mechanism through which all aspects of planning are viewed holistically and cumulative impacts of planning solutions on the environment are observed on a wider spatial level, which are impossible to observe at a narrower spatial scope.

At the end of the public session of the Planning Commission, the civil society organizations RERI and the Institute for Urban Policy submitted a request to the Secretariat for Urbanism and Construction Affairs of the City of Belgrade to suspend the further adoption of the plan and return the procedure to the beginning, in order to remedy all illegal actions and irregularities, and allow the public to effectively participate in drafting this important document (again without any response from the institutions). Amendments to the GRP for the City of Belgrade were officially adopted on February 14, 2022, at a session of the Belgrade City Assembly.

The implementation of the Law on Environmental Impact Assessment is at an alarmingly low level, with procedures being seriously violated and the quality of environmental impact assessment studies insufficient.

The key violations of the Law on Environmental Impact Assessment are a consequence of a *salami slicing* strategy (slicing one larger project with a potentially large negative impact on the environment into several smaller projects with a smaller impact, in order to avoid an adequate environmental impact assessment), issuing construction permits without having obtained approval for the environmental impact assessment study, and even the construction of new buildings without a building permit. The *salami slicing* strategy was also identified as a common practice related to thermal energy complexes, the *Zijin Bor Copper smelter and mining complex* in Bor, as well as in the construction of the *Linglong tire factory* in Zrenjanin.

Issuing building permits without or before approval for an impact assessment study is a practice commonly employed by competent authorities. The Regulatory Institute for Renewable Energy and the Environment (RERI) has identified numerous examples of this practice, including the following:

- Construction permits for a construction waste landfill in Bara Reva (Reva marsh, Krnjača) was issued without the appropriate approval for an environmental impact assessment study (and at a later stage the request for approval for the environmental impact assessment study was rejected). The construction permit was also issued without nature protection conditions, which were subsequently obtained. The Reva marsh is a location within an area of special natural importance (at the confluence of the Sava and Danube rivers) that provides a habitat for more than 120 species of birds;
- Construction permits for the phased construction of a flue gas desulphurization plant within the Nikola Tesla B thermal power plant were issued to *Elektroprivreda Srbije* (EPS) without approval for the environmental impact assessment study;
- A construction permit for the construction of a copper smelter in Bor by the investor *Zijin Bor Copper* was issued without approval for the environmental impact assessment study. Certain parts of this building are under construction without a building permit. In this case, RERI initiated a surprise inspection procedure, criminal charges and misdemeanor proceedings;
- The construction of a mine waste water treatment plant in Bor, which is being carried out by the company *Zijin Bor Copper*, is also ongoing and is being carried out without approval for the Environmental Impact Assessment study.

## The Jadar project and the implementation of the Law on Environmental Impact Assessment

The project that attracted the most media and public attention during the reporting period was the *Jadar* lithium and boron mine, which illustrates the inconsistent implementation of the Law on Environmental Impact Assessment.



Namely, the *Rio Sava Exploration* company, a daughter company of the *Rio Tinto* company, submitted a Request for determining the scope and contents of the Environmental Impact Assessment Study in July 2021, less than a month after the Ministry of Construction, Transportation and Infrastructure issued a Decision on the preparation strategic assessment of the impact on the environment of changes and additions to the Spatial Plan of the special purpose area for the realization of the *Jadar* project for the exploitation and processing of the jadarite mineral. The preparation of the Study on the environmental impact assessment of the *Jadar* project based on the Spatial Plan of the special purpose area, which is expected to be amended next year, and which represents the framework for realizing the special purpose of the planning area, creates a risk for the realization of the project, as it will not be in accordance with solutions from the amended special purpose area Spatial Plan, or the guidelines from the strategic environmental impact assessment of that Plan. The company divided the project into several smaller ones (*salami slicing*), and thus the request did not include the water supply system that was supposed to regulate the system of wells from the alluvium of the Drina River and its transport to the ore beneficiation plant, instead presenting it as a separate project. In addition, the request itself was incomplete and contained a number of deficiencies, including, among other things, failing to show the impact of ore processing on the environment or all types of waste that would be generated, as well as failing to clearly show the project's impact on water.

A large number of citizens and associations representing public interests participated in the environmental impact assessment procedure. However, in August 2021, the Ministry of Environmental Protection issued a decision on determining the scope and content of the Environmental Impact Assessment Study. Due to the shortcomings of the process described above, ten complaints to the adopted Decision by the Ministry were submitted by the interested public. On March 29, 2022, the Government of the Republic of Serbia, acting on the complaints received, annulled the decision of the Ministry of Environmental Protection on determining the scope and content of the Study, referring to the

Regulation<sup>13</sup> from January 2022, which annuls the Regulation on establishing the Special Purpose Area Spatial Plan for the realization of the project.

## Project for the construction of a flue gas desulphurization plant in TENT B and implementation of the Law on Environmental Impact Assessment

The Ministry of Environmental Protection announced on December 27, 2021 that EPS had submitted a request for approval of a Study on the impact assessment of the construction of a flue gas desulfurization plant in TENT B. On April 12, 2022, the Ministry announced that approval had been given for the Study<sup>14</sup>, despite the *salami slicing* of the project into several separate projects. Namely, the approved project does not include the gypsum suspension transport and disposal system – although the disposal of waste generated by the operation of the plant should have been an integral part of the project. Without assessing the impact of the project as a whole, it is impossible to fully determine the extent and complexity of the project's impact on the environment. Additionally, the Study was approved despite not containing mandatory elements prescribed by the Law on Environmental Impact Assessment (data on the characteristics and location of the project are missing, adequate alternatives have not been considered, and the impact of the project on the climate has not been assessed).

During the reporting period, public participation in environmental decision-making was limited, and in some cases made completely impossible. Although an e-consultation website ([ekonsultacije.gov.rs](http://ekonsultacije.gov.rs)) was launched in December 2021<sup>15</sup>, where all competent state administration bodies are obliged to publish all relevant information about the consultations and public hearings they conduct in a timely manner, the Ministry of Environmental Protection often did not fulfill this obligation, and irregularly and inadequately informed the public about the public consultations and public debates that it conducted.

13 Regulation on terminating the Regulation on establishing the Spatial Plan of the special purpose area for the realization of the “Jadar” project of exploitation and processing of jadarite mineral, available at: <https://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/vlada/uredba/2022/8/1>

14 The announcement was made after the reporting period, but is discussed here due to the importance (i.e. topicality) of the event for the period covered by the report.

15 Government of the Republic of Serbia: Decision of June 17, 2021, available at <http://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/vlada/odluka/2021/62/2/reg>

The draft Law on Amendments to the Law on Integrated Prevention and Control of Environmental Pollution was adopted on October 21, 2021, at a session of the Government of the Republic of Serbia, and was submitted to the National Assembly on October 22, without a public hearing. The Law contains only three articles. Article 2 proposes to extend the deadline for issuing integrated permits until December 31, 2024. The deadline from the previous Law on Integrated Prevention and Control of Environmental Pollution expired on December 31, 2020. Integrated permits are important, as they provide comprehensive environmental protection (protection of air, water and soil from pollution), prevention of pollution at source and application of the best technical solutions that are in accordance with environmental protection standards. These permits are a guarantee that even large polluters must operate in accordance with high environmental protection standards, and thus do not harm people's health and the environment. To date, as stated in the analysis of the effect of the Law, only 46 permits have been issued, which means that, at the time this report was prepared, a total of 181 plants are carrying out activities without the necessary work permits<sup>16</sup>, causing great damage to the environment and people. The Law on Amendments to the Law on Integrated Prevention and Control of Environmental Pollution was adopted in the National Assembly, without public discussion, on November 17, 2021.

The Draft Law on Amendments to the Law on Water entered the parliamentary proceedings under urgent procedure on June 25, 2021. Public participation was not enabled during the drafting of this proposal, nor in any previous phase, nor was the public informed in any way about the drafting of this act, which is critically important for the preservation of water as a public good and a key resource for all citizens of Serbia. This procedure, in which no public hearing was organized, directly violated Articles 76 and 77 of the Law on State Administration. The amendments were not announced in any public document or official statements. Even the website of the Directorate for Water of the Ministry of Agriculture, Forestry and Water Management does not contain the Draft Law, or any information that would indicate that changes

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16 RERI (2021): The Government of Serbia again proposes postponing the implementation of the Law on Integrated Pollution Prevention and Control, available at: <https://www.reri.org.rs/vlada-srbije-ponovo-predlaze-odlaganje-primene-zakona-o-integrisanom-sprecavanju-i-kontroli-zagadivanja/>

to the Law were being made.<sup>17</sup> Despite the reasoned requests from citizens' associations that the Law should be withdrawn from procedure, as it is not in accordance with the Constitution of the Republic of Serbia, and a petition signed by more than 70,000 citizens, the Law on Amendments to the Law on Water was adopted by the National Assembly on July 14, 2021. However, the Law did not enter into force, because the President of the Republic of Serbia refused to sign it. Previously, citizen's associations had addressed an open letter to the President, stating that the Law that has been adopted by the National Assembly is unconstitutional.<sup>18</sup>

A public hearing on the Draft Law on Amendments to the Law on Nature Protection was published in March 2021, and the Ministry of Environmental Protection held a public presentation of the amendments to the Law on April 6, 2021. Work on amendments to the Law on Nature Protection began in 2018, when a Working Group was established, whose members included some of the members of Coalition 27. The work continued in the following period with varying intensity, but since February 2019 the Working Group has had no activities, nor did civil society organizations that were members of the Working Group receive information about continuing work on amendments to the Law. In March 2021, civil society members of the working group found out through informal channels that a public hearing was underway. Only select representatives of civil society were invited to the public discussion, held as a video conference, having been forwarded the link for it, while the same link was not publicly available on the Ministry's website (as a result, the public could not participate in the public discussion). Only a few civil society organizations and a few competent institutions took part in the public debate organized this way, which is a direct consequence of the non-transparent invitation and announcement of the beginning of the public debate. Due to this and a number of other irregularities in the drafting process, such as the failure to include professional institutions (the Institute for Nature Protection of Serbia and the Provincial Institute for Nature Protection) in the Working Group that prepared

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17 Coalition 27: Immediately withdraw the unconstitutional proposal to amend the Law on Water, available at: <https://www.koalicija27.org/vesti/hitno-povuci-neustavni-predlog-izmena-zakona-o-vodama/>

18 RERI: <https://www.reri.org.rs/otvoreno-pismo-aleksandru-vucicu-predsedniku-republike-srbije/>

the Draft, a group of civil society organizations requested the withdrawal<sup>19</sup> of the Draft Law on Amendments to the Law on Nature Protection. The request for withdrawal was not accepted, and the Law on Amendments to the Law on Nature Protection was adopted. The report on the public hearing<sup>20</sup> was published late, in a form that does not comply with regulations and standards.

The public debate on the Draft Law on Amendments to the Law on Environmental Protection was also held in the form of a video conference with a small number of participants. It was held by representatives of the Ministry of Environmental Protection who could not answer most of the participants' questions, which concerned the character of the proposed amendments to the Law.

The lack of preparation and information on the part of the representatives of the Ministry of Environmental Protection, as well as the absence of representatives of other ministries and members of working groups who worked on the preparation of certain draft laws, proved to be a problem in the public debates held during 2021, which greatly affected the quality of discussions and reduced contributions from interested parties.

## Law on responsibility for damage to the environment

The report of the Republic Inspectorate for Environmental Protection for 2021, as the competent institution and the main source of information on the implementation of this Law, has not been published at the time of writing this report. It is therefore impossible to provide an assessment of developments in this area during the reporting period.

## Specific implementation plan for the INSPIRE directive

The Negotiating Position for Chapter 27 stated that it is necessary to adopt a Specific Implementation Plan in order to fully implement the INSPIRE Directive. The Specific Implementation Plan should be developed within the EU project

19 Coalition 27: Repeat the process of amending the Law on Nature Protection, available at: <https://www.koalicija27.org/vesti/koalicija-27-ponoviti-proces-izmena-zakona-o-zastiti-prirode/>

20 Report on the Public Debate on the Draft Law on Amendments to the Law on Nature Protection, available at: <https://www.ekologija.gov.rs/lat/informacije-od-javnog-znacaja/izvestaji-sa-javnih-rasprava/izvestaj-o-javnoj-raspravi-o-nacrtu-zakona-o-izmenama-i-dopunama-zakona-o-zastiti-prirode>

“EU for a better environment”. For the purposes of developing the Specific Implementation Plan, a working group was established under the leadership of the Republic Geodetic Authority, which had several meetings during the implementation of the project. According to information on the “EU for you” official website, the Specific Implementation Plan has been adopted, however, it has not been published and is not available to the general public.

## Access to information of public importance

In 2021, the Office of the Protector of Citizens (Ombudsman) considered a total of 5,947 cases, of which only 39 related to environmental protection. The largest number of complaints received by the Office in this field concerned the emission of noise and unpleasant odors in the environment above the prescribed limit values, as well as the overflowing of torrential streams and rivers that cause material damage to citizens. Citizens also noted the failure of the Ministry of Environmental Protection to act on their petitions as a frequent problem.

In 2021 the Commissioner received 5,181 formal complaints related to access to information of public importance.<sup>21</sup> The number of resolved complaints concerning information on endangerment and environmental protection was 131 (2.5% of the total number of resolved complaints).<sup>22</sup>

During 2021, 307 requests were submitted to the Commissioner and 27 complaints were filed against the Ministry of Environmental Protection. The number of complaints to the Commissioner against the Ministry is slightly higher than in 2020 (when there were 19) and twice as high as in 2019.

## Crimes against the environment

The issue of criminal liability of legal entities for crimes against the environment is rarely raised in practice. Namely, in the majority of cases, the person responsible is subject to criminal liability for a criminal act that is a consequence

21 Commissioner for Information of Public Importance and Personal Data Protection (2022): Report on the work of the Commissioner for Information of Public Importance and Personal Data Protection for 2021, available at: [https://www.poverenik.rs/images/stories/dokumentacija-nova/izvestajiPoverenika/2021/Izve%C5%A1taj\\_LAT.pdf](https://www.poverenik.rs/images/stories/dokumentacija-nova/izvestajiPoverenika/2021/Izve%C5%A1taj_LAT.pdf)

22 Ibid.

of the company's illegal business activities, and the outcome of the criminal procedure is merely the individual being punished, but not the company. In the Republic of Serbia, since 2008, the Law on Liability of Legal Entities for Criminal Offenses ("Official Gazette of RS", No. 97/08) has been in force, which regulates the conditions for the liability of legal entities for criminal offenses in a special part of the Criminal Code and other laws. This law prescribes criminal sanctions for legal entities, such as fines and termination of legal entities. Acting on RERI's criminal complaint, the Basic Public Prosecutor's Office in Negotin issued an order in April 2022 postponing criminal prosecution against the company *Zijin Copper*, as well as the responsible person from that company, for the criminal offense of environmental pollution, and ordered them to pay RSD 1,000,000.00 for humanitarian or other public purposes.<sup>23</sup>

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23 The comment refers to the period after the reporting period, and was added due to the importance (i.e., topicality) of the event for the period covered by the report.

# Financing

According to the National Strategy for approximation in the field of the environment, horizontal legislation is an area where harmonization, from an economic and financial point of view, does not represent a great challenge, while the expected costs of implementing regulations are significantly higher.<sup>24</sup> In the post-screening document<sup>25</sup> it is noted that most of the costs in this sector, of around €15,000,000, will be incurred by implementing the INSPIRE Directive. In the Negotiating Position for Chapter 27 itself, there is very little information about the estimated costs of further compliance with EU legislation and the costs of implementation itself. The only information regarding funding is related to the INSPIRE Directive, which states that a detailed situation assessment, implementation plan, accompanying costs and funding mechanism will be part of the Specific Implementation Plan for the INSPIRE Directive, to be developed with IPA support in 2014. There is still an obvious lack of information on the costs related to the harmonization of the regulations of the Republic of Serbia in the field of horizontal legislation with those of the European Union, as well as their implementation. In addition to the fact that data on consumption is generally not available to the public, and even when certain data does exist, it is often insufficiently precise and does not feature accompanying explanations, as is the case with the Report on the use of the budget of the Ministry of Environmental Protection for 2021.<sup>26</sup>

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24 National strategy for approximation in the field of environment for the Republic of Serbia ("Official Gazette of RS", No. 80 of October 28, 2011) <https://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/vlada/strategija/2011/80/1/reg>

25 Status and plans for the transposition and implementation of the EU acquis for Chapter 27: Environment and climate change, September 2015: <https://eupregovori.bos.rs/progovori-o-pregovorima/uploaded/Post-screening-SRP.pdf>

26 <https://www.ekologija.gov.rs/sites/default/files/inline-files/IZVR%C5%A0ENJE%20BUD%C5%BDETA%20MZZS%2001.01-31.12.2021.pdf>



# Recommendations



## Strategic and Legislative Framework

1. Qualitatively improve the processes of strategic environmental impact assessment (SEIA) and environmental impact assessment (EIA) by adopting a new Law on Environmental Impact Assessment and Law on Strategic Environmental Impact Assessment, as well as the necessary by-laws.
2. Harmonize List I (projects for which an impact assessment is necessary) and List II (projects for which an impact assessment may be required) with Annexes I and II of Directive 2011/92/EU.
3. Create a list of plans and programs for which a strategic environmental impact assessment is mandatory and a list of plans and programs for which a strategic environmental impact assessment may be required.



## The Implementation of Regulations

4. Provide transparent and timely information online for the public about public hearings. Improve the functionality of the e-consultation website so that it is appropriately adapted to the average user (access to documents, information about the start, duration and venue of public hearings, etc.).
5. Ensure the full implementation of the Regulation on the methodology of public policy management, analysis of the effects of public policies and regulations and the content of individual public policy documents (8/2019-79) in the environmental protection sector.

- 6.** Fully implement the guidelines set out in the Rulebook on the content of requests on the need for environmental impact assessments and the content of requests for determining the scope and content of the Environmental Impact Assessment Study when drafting environmental impact assessment studies.
- 7.** Ensure the inclusion of cumulative impact assessment in environmental impact assessment studies.
- 8.** Establish quality control of environmental impact assessment studies, as well as a review of studies every five years.
- 9.** Tighten the penal provisions for environmental pollution, and consistently apply the Law on Liability of Legal Entities for Criminal Offenses ("Official Gazette of RS", No. 97/08).
- 10.** Ensure the full implementation of the Aarhus Convention during the COVID-19 pandemic with regard to citizens' rights to take part in the decision-making process, right to information on the environment, and right to legal protection. All decision-making processes (adopting plans, programs, public policies, legislation, and approval of projects with possible environmental impacts) that violate citizens' rights must be postponed until epidemiological conditions allow for the implementation of these processes in accordance with Serbian law and the Aarhus Convention.



# HORIZONTAL LEGISLATION

## DO CITIZENS PARTICIPATE IN ENVIRONMENTAL DECISION-MAKING?

# 80.55%

of respondents have  
**NEVER  
PARTICIPATED**  
in environmental  
decision-making processes



## WHY ARE CITIZENS NOT PARTICIPATING?

### 44.86%

I don't know **HOW**  
to participate

### \* other reasons

I have no expertise in the  
subject matter

I didn't have the chance,  
nobody invited me!

Lack of time

The decisions are adopted  
formally

I don't think anyone cares  
about my views!

**Source:** The research was conducted from December 2021 to January 2022, as part of the EKO SISTEM program, supported by Sweden and implemented by the Young Researchers of Serbia. The poll included 1.486 citizens from all over Serbia.



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